

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

TOMAS RAUL GALLO,	§	
Petitioner,	§	
	§	
v.	§	Civil Action No. 4:13-CV-1897
	§	(Death Penalty Case)
LORIE DAVIS, Director,	§	
Texas Department of Criminal Justice,	§	
Correctional Institutions Division,	§	
Respondent.	§	

**RESPONDENT'S ADVISORY**

This is a habeas corpus case brought under 28 U.S.C. § 2254 by Petitioner Tomas Raul Gallo, a Texas inmate sentenced to death. On May 7, 2020, this Court ordered Gallo to file an advisory regarding the status of his state court litigation, including “circumstances that would discourage reopening this federal habeas action.” Order 1, ECF No. 71 (Order). Gallo filed that advisory on June 5. Pet’r’s Advisory & Status Report 1–12, ECF No. 72. The Court permitted Respondent Director Lorie Davis to respond within ten days. Order 1.

Respondent has confirmed that the state habeas proceedings are active and that the State and Gallo are in discussions for possible settlement of the case. Whether a settlement is reached or the case proceeds in an adversarial manner, the state habeas courts must necessarily decide the merits of Gallo’s intellectual disability and false testimony claims. *See Ex parte Gallo*, No. WR-

77,940-03, 2017 WL 562724, at \*1 (Tex. Crim. App. Feb. 8, 2017) (finding that two claims raised in his subsequent state habeas application satisfy the statutory requirements to pass over Texas's abuse-of-the-writ bar). As such, the Director agrees with Gallo that as long as his state habeas case remains active, a continued stay of these federal habeas proceedings is proper.

Respectfully submitted,

KEN PAXTON  
Attorney General of Texas

JEFFREY C. MATEER  
First Assistant Attorney General

MARK PENLEY  
Deputy Attorney General  
for Criminal Justice

EDWARD L. MARSHALL  
Chief, Criminal Appeals Division

s/ Travis G. Bragg  
TRAVIS G. BRAGG  
Assistant Attorney General  
State Bar No. 24076286  
Southern District No. 1590703  
*Counsel of Record*

Post Office Box 12548, Capitol Station  
Austin, Texas 78711  
Tel: (512) 936-1400  
Fax: (512) 936-1280  
Travis.Bragg@oag.texas.gov

*Counsel for Respondent*

## CERTIFICATE OF SERVICE

I certify that on June 15, 2020, I electronically filed the forgoing pleading with the Clerk of the Court for the United States District Court, Southern District of Texas, using the electronic case-filing system of the Court. The electronic case-filing system sent a “Notice of Electronic Filing” to the following counsel of record, who consented in writing to accept the Notice as service of this document by electronic means:

A. Richard Ellis  
75 Magee Avenue  
Mill Valley, California 94941  
a.r.ellis@att.net

s/ Travis G. Bragg  
TRAVIS G. BRAGG  
Assistant Attorney General